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Consumer law world of its own in Richmond court

By Alan Cooper
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The number and severity of consumer law cases has increased substantially in Richmond federal court as such cases have developed into what one practitioner has described as a world of its own.

The man most responsible for both the number and severity of cases brought under the Fair Credit Reporting Act and the Fair Debt Collection Practices Act is Newport News consumer specialist Leonard A. Bennett.

Alan D. Wingfield, a Richmond attorney often on the other side from Bennett in FCRA cases, notes that Bennett filed more than 450 cases in federal court in the last decade, or almost four times as many as any other lawyer.

As for severity, more of those cases are being filed as class actions, one of which resulted in a \$20.8 million settlement in 2008 against LexisNexis Management Inc. based on the failure of a subsidiary to comply with the act.

Wingfield, who tries to keep track of consumer cases, says more than 10 FCRA class actions are pending in the Richmond Division of the Eastern District of Virginia.

The number of FCRA and FDCPA cases grew by 44 percent between 2004 and 2009, according to Deputy Clerk Becky Pezzini, and the Richmond Division accounted for almost three-quarters of the cases filed in the Eastern District.

Alexandria attorney A. Hugo Blankingship III accounts for many of the FCRA cases filed outside the Richmond Division.

"When we first started doing it, nobody wanted to settle with us," Blankingship said. After he won a few cases, "people are paying a lot more."

In a typical case, the "people" are creditors and creditor reporting agencies who have erroneous information in their files that the clients of Bennett, Blankingship and others have trouble getting corrected.

Blankingship said his perception is that the credit reporting agencies find it easier to ignore a complaint by a consumer than to make a thorough investigation of it.

"It gets cleaned up real quick once you sue them," and plaintiffs' attorneys often find themselves in a "win-win" situation, he said. The agency acknowledges liability by promptly correcting the mistake, or discovery discloses an inept or half-hearted effort to respond to the consumer's complaint.

Defendants typically settle rather than allow a jury to find out that investigation of the complaint typically involves scanning a file and outsourcing it to the Philippines, India or Costa Rica for analysis at less than a dollar a file, Blankingship said.

Bennett said he and other attorneys practicing consumer law, for both plaintiffs and defendants, have benefited from the Eastern District's rocket docket. "In three years, Alan or myself have had four times the experience we would have had anywhere else," he said.

The pace of the docket also has brought the district's judges up to speed and generated what

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(VLW 010-3-262) (7 pp.)

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Wingfield described as an avalanche of decisions on consumer law. "We really do have good judges," Bennett said. "The cases that we've lost, the opinions are well reasoned," he added.

"It's a specialized area, and it requires knowing what you're doing," Wingfield said. The statutes have quirks not familiar to attorneys who practice in other areas of the law, and the case law is developing rapidly. "It's developed into a world of its own," he said.

Bennett said he takes most cases on a hybrid contingency basis, with a one-third to 45 percent contingency if the case settles that can be offset by an award of attorneys' fees if the plaintiff prevails at trial.

A case that gets resolved shortly after filing typically settles for \$30,000 to \$60,000, while the range for a case that is litigated more fully and has an element of identity theft might be \$50,000 to \$125,000.

Bennett's counterpart for FDCPA cases is Petersburg attorney Dale W. Pittman.

"The conduct of so many debt collectors and debt buyers is outrageous, over the top and targeted at society's most vulnerable people," Pittman said. "I find lots of personal satisfaction in rectifying these wrongs."

He said the downturn in the economy appears to have resulted in even more aggressive efforts by collectors.

Many of their practices are ideally suited for class actions, he said. "If a debt collector develops a misleading letter, they send it to thousands of people," he said.

Bennett and Blankingship share Pittman's satisfaction in righting what they view as the wrongs done to their clients.

"It's really pretty nice to be able to pay the bills and do good," Bennett said.

"It's a David and Goliath thing," Blankingship agreed. "It feels good and it feels good for the consumer."



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